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| SERIAL NUMBER | FILING DATE | FIRST NAMED APPLICANT | ATTORNEY DOCKET NO. |
| 06/898,674 | 08/21/86 | AMIN | H 4121.1 |

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| EXAMINER | |
| TEBLIN, R | |
| ART UNIT | PAPER NUMBER |
| 172 | <i>S</i> |

DATE MAILED: 04/29/87

This is a communication from the examiner in charge of your application.

COMMISSIONER OF PATENTS AND TRADEMARKS

This application has been examined Responsive to communication filed on _____ This action is made final.

A shortened statutory period for response to this action is set to expire 3 month(s), _____ days from the date of this letter.
Failure to respond within the period for response will cause the application to become abandoned. 35 U.S.C. 133

Part I THE FOLLOWING ATTACHMENT(S) ARE PART OF THIS ACTION:

1. Notice of References Cited by Examiner, PTO-892. 2. Notice re Patent Drawing, PTO-948.
3. Notice of Art Cited by Applicant, PTO-1449 4. Notice of Informal Patent Application, Form PTO-152
5. Information on How to Effect Drawing Changes, PTO-1474 6. _____

Part II SUMMARY OF ACTION

1. Claims 1 - 3 and 5 - 14 are pending in the application.

Of the above, claims 5 - 7 and 12 are withdrawn from consideration.

2. Claims _____ have been cancelled.

3. Claims _____ are allowed.

4. Claims 1 - 3 and 8 - 11 and 13 - 14 are rejected.

5. Claims _____ are objected to.

6. Claims _____ are subject to restriction or election requirement.

7. This application has been filed with informal drawings which are acceptable for examination purposes until such time as allowable subject matter is indicated.

8. Allowable subject matter having been indicated, formal drawings are required in response to this Office action.

9. The corrected or substitute drawings have been received on _____. These drawings are acceptable;
 not acceptable (see explanation).

10. The proposed drawing correction and/or the proposed additional or substitute sheet(s) of drawings, filed on _____, has (have) been approved by the examiner. disapproved by the examiner (see explanation).

11. The proposed drawing correction, filed _____, has been approved. disapproved (see explanation). However, the Patent and Trademark Office no longer makes drawing changes. It is now applicant's responsibility to ensure that the drawings are corrected. Corrections **MUST** be effected in accordance with the instructions set forth on the attached letter "INFORMATION ON HOW TO EFFECT DRAWING CHANGES", PTO-1474.

12. Acknowledgment is made of the claim for priority under 35 U.S.C. 119. The certified copy has been received not been received

been filed in parent application, serial no. _____; filed on _____.

13. Since this application appears to be in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11; 453 O.G. 213.

14. Other _____

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Art Unit 122

Restriction to one of the following inventions is required under 35 U.S.C. 121:

I. Claims 1-3, 8-11 and 13-14 drawn to crystalline cephalosporin compounds compositions and method, classified in Class 540, subclass 227.

II. Claims 5-7 and 12, drawn to a process for making group I compounds, classified in Class 540, subclass 220.

The inventions are distinct, each from the other, because of the following reasons:

Inventions II and I are related as process of making and product made.

The inventions are distinct if either (1) the process as claimed can be used to make another and materially different product, or (2) the product as claimed can be made by another and materially different process. MPEP 806.05(f).

In this case, the product as claimed can be made by a materially different process such as the process of Yang.

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

During a telephone conversation with Mr. Williams on 3-10-87 a provisional election was made with traverse to prosecute the invention of group I, claims 1-3, 8-11 and 13-14. Affirmation of this election must be made by

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Art Unit 122

applicant in responding to this Office action. Claims 5-7 and 12 are withdrawn from further consideration by the examiner as being drawn to a nonelected invention. See 37 CFR 1.142(b).

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a diligently-filed petition under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(h).

Claims 1-3 and 13-14 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The claims are rejected as being duplicative. Applicant describes a crystalline salt in the specification, and that the hydrochloride has the particular X-ray crystallography fingerprint of claim 3. Thus claim 2, 13 and 14 are redundant.

The following is a quotation of 35 U.S.C. 103 which forms the basis for all obviousness rejections set forth in this Office action:

A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

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Art Unit 122

Subject matter developed by another person, which qualifies as prior art only under subsection (f) and (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103, the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of potential 35 U.S.C. 102(f) or (g) prior art under 35 U.S.C. 103.

Claims 1-3, 8-11 and 13-14 are rejected under 35 U.S.C. 103 as being unpatentable over Labeeuw, et al 4,464,367.

Labeeuw teaches the free acid and salts of the instant compound useful for the same utility. Absent additional evidence, the instant crystalline compounds are patentably indistinct over the art. In re Weijlard, 69 USPQ 86.

Any inquiry concerning this communication should be directed to Mr. Teoli at telephone number 703-557-3981.

WT
Teoli/klc

703/557-3920

3-31-87


Donald G. Daus
Supervisory Patent Examiner
Art Unit 122